

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for
Termination of Probation of:**

RUFINO CO, M.D.

**Physician's and Surgeon's
Certificate No. A39750**

Respondent.

File No. 09-2002-135986

DECISION

The Proposed Decision of Janis S. Rovner, Administrative Law Judge, dated March 16, 2009, in Los Angeles, is attached hereto. Said decision is hereby amended, pursuant to Government Code Section 11517 (c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1 - the heading of "Case No. 20-2008-190457" is stricken and replaced with "Case No. 09-2002-135986."

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 7, 2009.

IT IS SO ORDERED April 7, 2009.

MEDICAL BOARD OF CALIFORNIA

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation of:

RUFINO CO, M.D.

Physician and Surgeon's
Certificate No. A39750,

Petitioner.

OAH No. 2008120709

Case No. 20-2008-190457

PROPOSED DECISION

This matter came on regularly for hearing on February 13, 2009, before Janis S. Rovner, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California. Dr. Rufino Co (Petitioner) appeared on his own behalf. Pursuant to Government Code Section 11522, Samuel Hammond, Deputy Attorney General represented the Attorney General of the State of California (Attorney General).

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on February 13, 2009.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician and Surgeon's Certificate Number A39750, to Petitioner on April 25, 1983. That certificate has been in effect continuously from the date it was issued and will expire on May 31, 2010, unless renewed. Petitioner is board-certified in psychiatry.

2. On December 31, 2003, the Board's Executive Officer filed an Accusation against Petitioner charging him with negligence in his care, treatment and management of three patients, pursuant to Business and Professions Code section 2234, subdivision (c). The Accusation alleged that Petitioner negligently entered into business relationships with the patients and derived income from them other than through treatment.

3. On November 15, 2004, Petitioner entered into a stipulated settlement with the Board's Executive Officer, pursuant to which he admitted all of the Accusation's charges and agreed to a disciplinary order, in lieu of contesting the charges in an administrative hearing.

4. On December 14, 2004, the Board's Division of Medical Quality adopted the stipulated settlement and disciplinary order as its Decision and Order (Decision) in the case. Effective January 13, 2005, the Decision revoked Petitioner's certificate, stayed the revocation, and placed Petitioner on probation for five years, subject to terms and conditions, including but not limited to, the following: (1) Serve a 30-day suspension from the practice of medicine; (2) Undergo a psychiatric evaluation, comply with the restrictions and conditions recommended by the evaluation psychiatrist, and refrain from practicing until notified that he is mentally fit to practice safely; (3) Successfully complete an ethics course; (4) Complete a professional boundaries course, and if required, undergo and complete a neuropsychological performance, competency and/or mental health assessment, and complete, at a minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account the information obtained from the assessment and other information about this matter, and comply with any other conditions or recommendations of the boundaries program; (5) Perform 100 hours of free non-medical community service to a community or nonprofit organization, as approved by the Board; (6) Pay cost recovery of \$4,000 in installments over the first 18 months of probation; (7) Pay probation monitoring costs, as required; (8) Obey all laws; and (9) Submit quarterly reports.

5. (A) The conduct that led to the Board's discipline of Petitioner's license occurred in 2001, when he inappropriately engaged in business relationships with three patients. Prior to 2001, Petitioner was introduced to what he thought was a great product to help reduce cholesterol for his own use. He had been previously diagnosed with high blood pressure and high lipid fatty acids. He was reluctant to take conventional medications, called "statin drugs," because of their side effects. He began looking into alternative treatments and started taking supplements, exercising, and moderating his diet. He attended lectures on alternative treatments and came away excited and impressed. In 2001, he joined a company that marketed the supplements through a closed network marketing plan. A user solicits new users and makes a percentage of the profit from selling the supplements to the new users. The company did not sell the supplements on the open market. After purchasing products for his own use and marketing them to his friends and family, he was so impressed with the benefits that he began recommending them to his patients because he sincerely thought they could help.

(B) Petitioner was and currently is a psychiatrist. He treated the first patient named in the Accusation for depression. He had been treating her with anti-depressants and she improved, but she began complaining about gaining weight. He signed her up and sponsored her to receive the supplements. He similarly recommended the supplements to two other existing patients. Respondent made little or no money from supplying the supplements to his patients. He concedes, however, that by entering into a business relationship with the three patients and contacting them outside their normal office appointments, he crossed the professional boundary and acted negligently in his treatment and care of the patients.

6. On March 7, 2008, Petitioner filed a petition for termination of his probation. To date, Petitioner has complied with all terms and conditions of his license probation. He paid all probation monitoring costs due and owing, submitted his quarterly reports on time, appeared as requested for interviews, paid all cost recovery in the sum of \$4,000, served his 30-day suspension, and completed the psychiatric evaluation, ethics course, professional boundaries program and community service probationary conditions, as required.

7. As soon as Petitioner became aware of the patient complaint about his conduct, he stopped offering the product to his patients. He has expressed regret for what happened, but indicated that he learned from his experience while on probation. He gained much insight from the professional boundaries program he attended while on probation. The program was offered by the University of California, San Diego, Physician Assessment and Clinical Education Program. Respondent has also completed numerous continuing education courses during his period of probation.

8. Petitioner believes that the community service component was the most beneficial aspect of his probation. He volunteered at Habitat for Humanity building houses. He also became active in a charitable organization that raises funds to help with medical care in the Philippines. The organization's members are all doctors, and Petitioner was elected as its treasurer. Most recently, it shipped over 500 wheel chairs to the Philippines for indigent patients. The organization also purchased a van that serves as a mobile operating room for operating on children with cleft palates. Petitioner intends to continue his charitable activities on behalf of this organization, which have already far exceeded his probationary requirements.

9. Except for the matter that led to his probation, Petitioner has never faced any legal problems with any patients or hospitals. During his more than 26 years of practice as a physician in California, there is no record that he has been named in a malpractice civil lawsuit.

10. Petitioner is employed as a child and adolescent psychiatrist at Kaiser Permanente in Fontana, California. He has stable employment, having worked 19 years for Kaiser. He and his wife of 25 years reside in Orange County with their two daughters, who are 17 and 18 years of age. He was born in the Philippines to parents who had emigrated from their native China. Petitioner attended medical school in the Philippines and traveled to

the United States to complete his residency in psychiatry at the University of Kansas. He practiced psychiatry in the State of Washington for five years before he and his wife moved to California.

11. As a witness at the hearing and in other comments to the Board's investigator, Petitioner established that he has benefited from the Board's probationary conditions. It has given him an opportunity to analyze and improve himself as a person and in relation to his medical practice.

12. (A). Dr. Arezoo Rahmin has known Petitioner for the five years they have worked together at Kaiser Fontana. Dr. Rahmin is also a psychiatrist. She and Dr. Co exchange information and discuss cases. She knows Petitioner as a caring, supportive, and competent physician who is well-respected. Dr. Rahmin knows about Petitioner's problem with the Board and she believes he has learned his lesson and should be granted early termination of his probation.

(B) Dr. Jeffrey Davis has also worked at Kaiser with Petitioner for five years and the two have a business relationship. Dr. Davis has co-treated numerous of Petitioner's patients. He also describes Petitioner as "competent and caring." He, too, is aware of the conduct that led to Petitioner's discipline in this matter and believes that Petitioner has learned his lesson and will not make a similar mistake in the future.

LEGAL CONCLUSIONS

1. Petitioner has made the necessary showing that it would be consistent with the public interest to permit early termination of his probation, by reason of Findings 6 through 12.

2. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden required a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained his burden of proof.

3. Business and Professions Code section 2307, subdivision (e) states in pertinent part:

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

4. California Code of Regulations, title 16, section 1360.2 states:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code,¹ the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner's discipline was based upon the conduct referred to in Factual Finding 5. Since the issuance of the Board's Decision, Petitioner has made significant progress in rehabilitating himself. Petitioner has also had a lengthy career as physician in California without any other record of complaints about him. He has complied with all requirements of his Board-ordered probation. The evidence sufficiently detailed his complete rehabilitation following Board discipline.

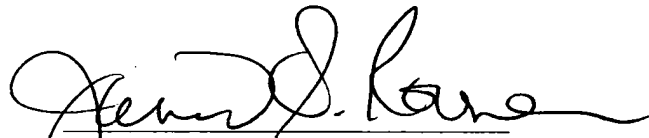
¹ Government Code section 11522 applies to both petitions for reinstatement and for reduction of penalty.

6. Petitioner has sustained his burden of proving that he is rehabilitated and entitled to early termination of his probation.

ORDER

The petition of Dr. Rufino Co, for termination of probation, is granted.

Dated: March 16, 2009



JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings